

**REPORT OF PROCEEDINGS OF
THE HOUSE OF KEYS**

**Douglas, Thursday, 21st June 2001
at 2.30 p.m.**

Present:

The Speaker (the Hon J D Q Cannan) (Michael); Hon A R Bell (Ramsey); Mr R E Quine OBE (Ayre); Mrs H Hannan (Peel); Hon W A Gilbey (Glenfaba); Mr P Karran, Hon R K Corkill and Mr G T Cannell (Onchan); Messrs J R Houghton and R W Henderson (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr J P Shimmin and Hon A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc) and Mr J Rimington (Rushen); with Mr R B M Quayle, Acting Secretary of the House.

The Chaplain took the prayers.

Apologies for Absence

The Speaker: Hon. members, we will continue with our business, and you have before you the order paper. I have apologies from Mr Rodan, Mr Karran, Mr North, Mrs Crowe, Mr Braidwood and Mrs Brenda Cannell.

**Customs and Excise etc (Amendment) Bill — Standing Orders Suspended —
Further Consideration of Clause 1 — Third Reading Approved**

The Speaker: The first item is the Customs and Excise etc (Amendment) Bill, the third reading, Mr Corkill, and before that we have Mr Quine to move the suspension of standing orders.

A Member: He is not here.

Mr Gelling: A good start, Mr Speaker.

A Member: That is a good start, sir.

The Speaker: Mr Quine.

A Member: I can see him.

Mr Henderson: He is here, Mr Speaker.

A Member: He is upstairs, Mr Speaker. *(Interjections)*

A Member: There he is. *(Interjections)*

The Speaker: Hon. member.

Mr Quine: Thank you, Mr Speaker. I apologise for delaying you, sir. Either I have lost my papers or somebody has purloined them. *(Interjections)*

I would like to move, if I may, sir, that I be permitted to revisit the second reading stage. Hon. members will recollect that on 29th May, when we last dealt with this particular Bill, the member in charge of the Bill sought suspension of standing orders in order to deal with clauses immediately after the second reading and, of course, this hon. House was content to go along with that. But at that time I pointed out - and indeed I am sure the hon. House realised - that because we were following the second reading immediately with the clauses, it did not provide us with an opportunity to have the normal intervening period to consider, on the strength of the second reading, what amendments we may wish to put, so I intimated at that stage that I may need to take advice on that and come back at this sitting to see if the House was sufficiently disposed towards me revisiting the clauses stage so that I could move an amendment to one of the clauses. That is the background to it. I am sure hon. members are *au fait* with the essence

of the amendment, because I spoke to it at that hearing on 29th, and so I would like to move that standing orders be suspended in order that I may move an amendment by the means of revisiting the clauses stage. I beg to move:

That under Standing Order 198, standing orders be suspended to further consider clauses.

The Speaker: Mr Corkill.

Mr Corkill: Mr Speaker, I would like to second the motion in the name of the hon. member for Ayre, Mr Quine. Indeed this House did afford the privilege of advancing the readings of this Bill for myself, and I think it would only be courteous for myself to afford Mr Quine the opportunity, and for this House to afford Mr Quine the opportunity, to promote his clause and have it debated, because it was a truncated debate because of the pressure of time. I am pleased to second his motion on the order paper, Mr Speaker.

The Speaker: Does any member wish to speak? The motion before the House is that under Standing Order 198, standing orders be suspended to further consider clauses of the Customs and Excise etc (Amendment) Bill. All those in favour of the motion, please say aye; against, no. The ayes have it. The ayes have it.

Motion by Mr Quine that clause 1 be amended as follows. Mr Quine, sir.

Mr Quine: Thank you, sir. The clause in question is as intimated on the order paper. What I am seeking to do is to move an amendment to clause 1:

Page 2; line 13: At the beginning of subsection (3) insert 'Subject to subsection (4),'

After line 15: insert a new subsection -

'(4) The collector shall not disclose nor authorise the disclosure of any information or documents for the purposes of any criminal investigation or proceedings outside the Island unless the Attorney-General has given his written consent to the disclosure',

and re-number the subsequent subsections.

Hon. members will recollect that the substance of the Bill is, of course, that the Collector of Customs may release certain information fitting into the subcategories provided in the Bill and, as it is currently cast, the discretion to release or not to release the information within the provisions of that clause is a matter entirely for the Collector of Customs and, of course, Treasury. Now, my concern is that if we look at the detail of the Bill, it provides that information may be released under a number of circumstances, but in the main in relation to the investigation of crime or the conducting of criminal proceedings. The information may be released - and I will just give one illustrative circumstance - 'where there is a request from an outside territory'. I am indeed concerned with the position of the release of information to a jurisdiction outside of the Island, but it may be released to a jurisdiction outside of the Island in circumstances where the information provided by that outside authority corresponds to a criminal offence here in the Isle of Man, in other words that the circumstances forming the basis of the request are sufficient in themselves to match an offence here on the Island, not anything particular to value-added tax but an offence under Manx law. Now, my concern is that if information is released, then once it has been released there is no position of return. That information will go into the hands of the overseas jurisdiction - which may be in relation to a VAT matter, it may be not - and in terms of what may happen to any person subject to an investigation in that territory, or before the courts in that territory, we have to bear in mind that there are very substantial, if not draconian, penalties for some offences simply because the facts forming the basis of the request match an offence in the Isle of Man.

I would submit to this hon. House that if the nub of the matter is that there is a need to look at a set of circumstances reported to the authorities here and to take a decision in relation to those circumstances and say that these facts are sufficiently dovetailed and they sufficiently compare with an offence that is on our statute books here, then I believe that that is a matter that calls for, to put it mildly, considerable legal knowledge, not just practice of VAT matters but legal knowledge, and a value judgement which can best come from a person who is legally trained. Consequently, what my amendment does is to say, 'Yes, it is fine as the Bill stands, as far as it goes.' The collector may, in these circumstances specified in the Bill, release this information, but before he does so he will get the clearance of the Attorney-General, he will get the concurrence or the approval of the Attorney-General, as spelt out in this new sub-clause 4. I believe that that is a prudent and sensible course of action to take. I do not think it does anything to harm the standing of the Isle of Man, because we will be co-operating to the full extent of the law, but what we would be doing would be ensuring that the release of information was done under controlled circumstances and done ultimately by a person who was best qualified, if you wish, to form a decision in relation to the matching of the facts on which the request is made against Manx criminal law on a fairly wide basis, and that is what I am seeking to achieve. So I would ask this hon. House if they would give that matter their consideration.

As I say, I do not think there is any downside in this, because although there has been some suggestion that this could be read as the Isle of Man being reluctant to co-operate with outside authorities, it is anything but that; what we would be saying is that we were more than willing to co-operate with outside authorities where the request is fully justified, but we would be building into it, in the interests of our own community and in the interests of any party belonging to another state, a security factor to make sure that we did not live to regret the release of any particular piece of information. I do not believe that is onerous, and I certainly do not see any downside for business; in fact, I have had two contacts from the business world in relation to this matter. I think that from the business community's point of view, particularly in terms of those concerned with financial matters, it can be seen as providing some reassurance to those who deal with us that there will be no accidental or indiscriminate - but I am sure there is no question of indiscriminate release - or inappropriate release of information, which could have quite serious consequences for a party who may be the subject matter of the information released. So that is all I am suggesting: simply that this new sub-paragraph be inserted.

I might add that I am not setting any precedent by doing this; there is already, in Manx legislation, a requirement for information in certain circumstances to be approved by the Attorney-General. It is a matter for judgement by this hon. Court whether, in these particular circumstances in relation to tax matters, that is justified in this case. I believe it is, particularly when you have regard, as I say, to the consequences of the release of information. If it is properly released - and I have no problem with that - that is fine, and any party in another territory should answer fully and take the full impact of the law, but I do believe that we have an obligation to make sure, because this is not a straightforward judgement, that it is done in controlled circumstances so that everything possible is done to avoid an error occurring, and that is why I move this amendment. Thank you, sir.

The Speaker: Mr Henderson.

Mr Henderson: I beg to second, sir.

The Speaker: Mr Rimington.

Mr Rimington: Mr Speaker, is it possible, without denying my right to speak later, to ask for a point of clarification from our learned Secretary?

The Speaker: You seek clarification from the learned Secretary?

Mr Rimington: Yes, on the . . .

The Speaker: On the Bill?

Mr Rimington: On the Bill.

The Acting Secretary: Perhaps you would say what you want clarified.

The Speaker: What would you want clarified?

Mr Rimington: The hon. mover referred to matters which constitute and match a criminal offence on the Island. Now, 17(4)(d) defines what 'crime' is in (a) and, in (b), 'criminal investigation': in (a) 'crime' means 'any conduct which constitutes one or more criminal offences, whether under the law of the Island or of any country or territory outside the Island' i.e. of the law outside the Island, or (b) - and it goes on, obviously - corresponds to 'any conduct which, if it all took place on the Island, would constitute one or more criminal offences'. Is the paragraph which the hon. member is concerned about - i.e. subsection (2) of clause 1 - solely referring there to crimes which would match those on the Island, or is it broader than that? Does it constitute crimes which would be in the law of any other jurisdiction? I hope I have made myself clear.

The Acting Secretary: Mr Speaker, I am exceedingly hesitant about giving legal advice on the run without notice and, whilst I am very happy to give procedural advice, I think this is a rather complex legal issue that I do not really feel competent to give an opinion upon. My initial reading suggests that section 174(d), to which the members refers, is the definition section, and the definition of 'crime', which relates back to section 174(b), which is the subject of the proposed amendment, clearly indicates that it is 'conduct which constitutes one or more criminal offences, whether under the law of the Island or of any country or territory outside the Island'. I think I would be reluctant to go any further than that without notice of this question, sir.

The Speaker: Hon. member, are you satisfied or would you prefer to have further clarification and have it raised in the Legislative Council?

Mr Rimington: Perhaps the hon. -

The Speaker: Perhaps you would like to stand when you speak, sir.

Mr Rimington: My apologies, Mr Speaker. Perhaps the hon. mover of the Bill will be able to. . . I do not know if he will be able to address that issue. . .

The Speaker: Thank you.

Mr Rimington: And I reserve my remarks.

The Speaker: Right. Hon. member Mr Corkill. (*Interjections*)

Mr Corkill: Mr Speaker, I wish at this point to speak to the amendment. Can I say at the outset that if the amendment is successful, I will not be moving the third reading of this Bill, because it creates that amount of impact, but if we do get to the stage of moving the third reading of the Bill - and I sincerely hope so - then I will do my best to actually cover the points Mr Rimington made.

Can I say that I fully appreciate the hon. mover of this amendment's desire to perfect the legislation. I think he said in his words that he was not creating a precedent and that this situation with regard to the Attorney-General being asked for 'clearance', as it were, before information is released exists in other legislation. Indeed, if you look into the Criminal Justice Act of 1990 with regard to money laundering disclosures, that is the case. Now, since 1990 a number of situations have developed internationally. There has been a great deal of scrutiny of offshore jurisdictions, including the Isle of Man: we have had FATF inspections and we have had the Edwards Review. And can I say that the situation that existed in that 1990 Act was frowned upon, particularly by the FATF, because the world has moved on and, in fact, exchange of

information is a different situation from what it was 11 years ago. Quite recently, in the Criminal Justice Act 2001, the need for the Attorney-General to be involved in the disclosure of this exchange of information was removed, and so, by putting it back in in this particular legislation, we are creating quite an inconsistency throughout our legislation, where, in fact, we would be singling out Customs and Excise to be basically 11 years out of date, whereas other situations where information is exchanged with overseas jurisdictions would not be going through the channels of the Attorney-General. And in practical terms that causes operational difficulties, because sometimes when information is in the hands of the Customs and Excise Division, it is not always quite clear as to where it has come from - in fact, it may have come from more than one source - so you would be creating an imbalance in terms of our enforcing authorities on the Island that would be, I suggest, an open door for criminal activity to exploit. Now, I think it would be most unfortunate to send the wrong message outside of this Island when, in fact, we have made so much good ground in recent years in improving perceptions about the regulatory strengths of our jurisdiction; we would actually be taking a step back. I certainly do not want to do that, and I am sure the hon. member for Ayre does not want to do that, but that is a fact that would flow from this amendment.

There is also the issue of the 'interplay', as it were, of existing mutual assistant legislation. Can I just say to hon. members: the exchange of information is not new, it goes on all the time anyway, and we could actually upset our present arrangements between the UK Customs and Excise authorities and ourselves. The concern is that we are going to end up with confusion and anomalies created, which will produce delays in what we are actually trying to achieve, which is the reduction of criminal activity. So that is the fundamental objection that Treasury has to the hon. member's amendment.

I come to the point that Mr Rimington raised about what criminal activity is. The way information is asked for is that if an offence has been committed somewhere else, then if that would be a criminal offence within the Isle of Man, then it seems quite right and proper to me that we should be helping those jurisdictions with the information to actually prosecute the alleged crime. That is what the whole purpose of exchanging information is all about. There are other parts of this Bill, of course, which are to do with the exchange of information between departments within the Island, and I would like to cover that, perhaps, when we get to third reading. That is separate from what the hon. member is achieving in this case.

The prime objection is that there are safeguards and procedures in the Customs and Excise area to prevent what the hon. member is fearing. It is not mandatory that information has to be exchanged; it is discretionary, so the discretion is there within Customs and Excise as to whether they do exchange this information or not. Adding the layer of the Attorney-General will not actually improve that, in our view, but in fact opens the door to hamper the activities of our enforcing agencies.

I have covered the issue with regard to our existing Customs and Excise Agreement: we are part of a single customs area by that agreement, and therefore we do not want to create barriers between ourselves and the United Kingdom Customs and Excise that are unnecessary, because the flow of information is as one. We are a single customs area by that agreement.

I think those are the major points that I wish to cover, Mr Speaker. The summary of the division of Treasury, Customs and Excise's concern is that, having met FATF concerns already - and that was removing the Attorney-General's consent in the case of money laundering - we are now trying to put that hurdle into another piece of legislation. That is the key to my objection, and I would urge hon. members to vote against the amendment.

The Speaker: Mr Cannell.

Mr Cannell: Thank you, Mr Speaker. I have an extremely simplistic enquiry to make about the amendment. As we have just heard from the hon. Treasury minister and, of course, as we are well aware, there is a common customs area, but I wondered: if, in fact, that is always going to be so; whether writing this legislation in at this point does not cater for any other possibilities that the Island might, in the future, entertain; and, in any case, whether he considers that Her Majesty's Attorney-General being requested to give written consent to the disclosure of information could actually see him in a very difficult position, because the enquiry could well be dependent upon difficulties which the United Kingdom might face but which, in fact, the Isle of Man might not be in any kind of jeopardy with. So, I do not see it as being a clear-cut case. I do appreciate that, in fact, the information being sought would be more likely to come from further shores than the United Kingdom itself, but you could have a possible conflict of interest. That is all I wish to say. Thank you.

The Speaker: Mr Rimington, you have made your point of clarification; is this your contribution to the debate?

Mr Rimington: Yes. Right, my apologies for possibly not getting that clarification earlier. It has therefore left me in a difficult position in supporting the amendment and supporting the Bill, because the reality, actually, as I see it, drives somewhere between the two. What concerns me is that the hon. mover of the Bill is referring to crimes or criminal investigations which correspond to the law of the Isle of Man, i.e. if an investigation or criminal investigation would take place here as well and it matches, and that is what the hon. mover of the amendment is referring to. But in my reading of the Bill and of 174(d), i.e. what 'crime' means, then to me it does seem to be. . . I will not say quite clear, though I wish I had that clarity on legal matters, but certainly suspicious anyhow that we are not just talking about crimes which would correspond to crimes on the Isle of Man but under the law of the Island or of any country or territory outside the Island, i.e. I do not know if it is a recognised jurisdiction but New Guinea or wherever can write to us and say, 'Look, we have got a criminal investigation against x or y and we would like all the information.' And then, obviously, (a) goes on to (b) but with 'or', and that is quite critical. It is not 'and'; it is 'or'. And so, as I interpret it - and I will gladly be proved wrong - you are saying any criminal investigation, under any law, anywhere in the world. That is my concern, and if my concern is not met, I will have to vote against the whole thing.

Mr Corkill: May I add to the point of clarification, Mr Speaker?

The Speaker: All right.

Mr Corkill: My briefing notes, Mr Speaker, for the help of us all, I suspect: the purposes of section 174(2), a crime is defined as being 'conduct which would constitute a criminal offence or offences and, if committed outside the Island, would be such if committed in the Island'. The terms 'criminal investigation' and 'criminal proceedings' in section 174(a)(ii) are to be interpreted accordingly.

The Speaker: Does any member wish to speak or can I call upon the mover of the amendment to respond? Mr Quine.

Mr Quine: Thank you, sir. With hindsight, of course, perhaps we would have been better not to have rushed straight into the clauses stage, but we have not had the luxury of that. But I have, obviously, taken the time to go and see Mr Boyd and discuss this with him and to have this amendment drawn up, so I have had the advantage of some legal advice on it. I had hoped that I had explained it to the best of my understanding, and that is, of course, that the nub of my concern flows - not in its entirety - from 174(d), where we have a definition of 'crime' - and the crime dictates what will be a criminal proceeding - and it is (b): 'is or corresponds to any conduct which, if it all took place in the Island, would constitute one or more criminal offences'. And then we go on further down, where we see the question of the actual conduct - the word

'conduct' - elsewhere constituting a criminal offence here. And that really is what I am asking hon. members to pass judgement on, if you wish.

I reiterate that I am not opposing the principle of the disclosure of information to an outside territory under controlled circumstances - I am not opposed to that at all - and I do not think that that could be read into my amendment, but what I am asking this hon. House to stand in judgement on is to say: are you satisfied that any territory outside that makes a request here and does so on the strength of 'conduct' - a set of circumstances in that territory - and says, 'This conduct or these circumstances match one of your criminal offences and therefore we ask for that information to be released to us'? Are we happy for that to be done? This is where I am coming back to the practical aspect of this. I am not impugning in any way the competence or the integrity of the Collector of Customs - that is not the issue, because there is a perception and a reality in these situations; what I am suggesting to you is that it is in some ways unreasonable to ask, essentially, a lay person to look at a request and a conduct depicted in a set of circumstances and say, 'Ah, this set of circumstances match' whatever the offence may be somewhere on our criminal statute books. I am suggesting to you that that is an unreasonable requirement of the Director of Customs. It is, I think, hazardous in the sense that although we are primarily concerned with what happens here in the Island and our good working relationships with the UK Customs and everybody else and playing our part in the international community, I do believe we also have an obligation to do it under circumstances that provide the best security of mechanism that we can provide. I have been listening carefully and I have been trying to pinpoint the downside of the proposition, and I have yet to identify the downside, because all we are saying is that what you have here in statute remains in statute, but we are saying that, in respect of these types of requests, the Attorney-General has to satisfy himself that there is a proper match. That is all I am suggesting. Now, if that is unreasonable, hon. members are not going to support my amendment. I suggest to you that that is reasonable. I suggest to you that that does nothing to undermine the standing of the Isle of Man or the ability and the perspective of the Isle of Man playing its part in the international scene, far from it; I think we will be seen to be playing our part and playing it fully, but we will also be seen, both in relation to our own business and firms here and in relation to international obligations, to be doing that under the most controlled circumstances, the best circumstances that we can offer. That is what I am suggesting.

Now, the hon. member for the Treasury, of course, made reference to this being a step back. I do not believe that that is the case on what I have been given here: section 17(h) was inserted by the Criminal Justice Bill (Money Laundering Offences) of 1998. Now, 1998 is not light years away; that is only a hop, skip and a jump away. As I say - and I do not think it is disputed by the hon. member - there is certainly a precedent in law for doing this. Hon. members of this House may be minded to say that it should not be followed in this case. That is for them and that is for the record to show, but I am putting this proposition forward and I am perfectly content for this House to stand in judgement on that matter, and I so move, sir.

The Speaker: Hon. members, the motion before the House is the amendment standing in the name of the hon. member for Ayre, Mr Quine. All those in favour of the amendment, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Quine, Houghton, Henderson, Duggan, Karran and Cannell - 6

Against: Mr Gilbey, Sir Miles Walker, Messrs Rimington, Brown, Cretney, Shimmin, Downie, Mrs Hannan, Messrs Bell, Corkill, Gelling and the Speaker - 12

The Speaker: Hon. members, the amendment fails to carry, with 6 votes in favour and 12 votes against.

We now move on to item number 2 on our agenda, Customs and Excise etc (Amendment) Bill for third reading. Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. I would just like to take the opportunity to recap on this Bill and once again reiterate my thanks for the House enabling its progress. The basic proposals recognise the fact that it is necessary to amend the Customs and Excise law in a number of ways. Now, there is a need for statutory gateways between government departments and agencies, and this has been recognised for some time. In fact, this will need to be even greater when the Human Rights Act of 2001 comes into operation. It is essential for the various bodies involved in countering fraud and other forms of criminal activity and for the good regulation of business in the Island that they are able to talk to one another. The use, as at present, of the 'public interest' argument to justify the exchange of information between agencies - which could be used in at least some circumstances in the past - will be far less appropriate in the light of human rights legislation, where specific provisions are preferable to authorise disclosures and identify when they are allowed.

The amendments made by this Bill add to the existing arrangements in place for the Customs and Excise Division to exchange information with the Income Tax Division and the Department of Health and Social Security, amongst others. It redefines 'assigned matters', and that is matters that the Customs and Excise service has a general responsibility for. That is being updated, with the original and quite limited definition, which dates back to 1986, being replaced. The new definition, though it does not seek to extend the responsibilities of the service into any new areas, does provide a firm basis for its current operations and removes any doubt as to its involvement in some areas. Regarding the export control, the amendments in clause 3 of the Bill are intended to enable the Island to keep its controls on strategic exports and related matters up to date. International commitments and the Customs and Excise Agreement demand that the Island maintain its export controls and related law in line with that of the UK and the international community as a whole. Recently, both the EU and the UK have moved to control so-called 'intangible exports' of information and software by electronic means, fax and e-mail being two. Moves are also afoot to control the provision of technical assistance to rogue regimes and those that broker the supply of arms, equipment and training et cetera. The changes made to the legislation which we have before us allow us to apply UK or EU provisions relating to customs and excise matters.

Now, there were questions raised by members at the last reading, and one of those was to do with the enforcement authorities, and we debated whether they were on or off the Island. Well, they are all on the Island, and it would be very complicated if we were dealing with enforcement authorities off the Island, so that is not an issue.

Some members asked about the human rights aspect, and I have checked into that and it does most definitely comply with the Human Rights Bill. The Bill is permissive in that it allows the exchange of information but it does not make it mandatory for the authorities to supply information in instances where they do not consider it appropriate.

I think there was also a question about data protection, and the Data Protection Registrar was fully consulted in the process of this Bill, and so there is no issue there.

I think the main concern that members have had is 'fishing expeditions' in all of this, and I guess the hon. mover, Mr Quine, with his amendment, is concerned about people perhaps having the wrong motives for acquiring information. As I have already said, the Bill's provisions are permissive, there is no obligation on authorities to release information if they do not feel that it is appropriate and, as I have said, procedures and controls will be put in place. If the actions of the authorities are to be in accordance with the requirements of the Human Rights Act 2001, then they must be proportionate to the threat being combated, lawful, authorised by senior management and necessary in each case. These requirements will be applied to the

Mr Cannell: We do not need you to tell us everything.

The Speaker: Hon. member, please confine your remarks to the Bill under debate.

Mr Rimington: Yes, Mr Speaker, I would do so had I not been interrupted and been told that I was insulting.

A Member: You are.

Mr Rimington: Let us then look at clause 1, for those who have it, and then they can respond and tell me if I am wrong - and I would happen for them to tell me that I am wrong. If you look at (a) 'any criminal investigation whatever which is being or may be carried out, whether in the Island or elsewhere', that is quite clear. And (b) is 'any criminal proceedings'. Now, there is a difference between the two and the two, are covered differently in the definitions in 17(4)(d)(b), which is on the top of page 4, for those with photographic memories. And (b) is 'or corresponds to any conduct which, if it all took place on the Island, would constitute one or more criminal offences, and references to criminal proceedings shall be construed accordingly.' So that is clear; criminal proceedings are matched to what would take place on the Isle of Man. That is the match that was referred to by the hon. mover of the Bill and the hon. mover of the amendment. It then says - and it was not said with an 'and' - 'Criminal investigation means an investigation of any crime, including an investigation of any alleged or suspected crime and an investigation of whether a crime has been committed'. Of any crime. 'Crime' is defined in part (a) of 174(d), and 174(d)(a) says that is 'any country or territory outside the Island'. Now, my legal knowledge is zero, but we are here as a legislative body, and my appreciation of those words means what I said earlier: that we are passing legislation which is not just matching the laws and regulations in the Isle of Man in terms of criminal proceedings but any criminal investigation anywhere outside of the Isle of Man. Now, I do not think that is the intention of the Bill, but that is how I see it as read, and that is why I would have to vote against. It has got to go through against me whether I am right or wrong, because many people have not got the Bill in front of them to judge whether I am right or wrong -

Mr Cannell: Excuse me, Mr Speaker -

The Speaker: Mr Cannell, please sit down. Hon. member Mr Rimington, I refer you to standing order 98: 'No member shall digress from the subject matter of any question under discussion, and all imputations of improper motives and all personal reflections on members shall be deemed disorderly.' Carry on, sir.

A Member: Lock him up.

Mr Rimington: Right. Well, I would ask the hon. mover - when the Bill goes its natural course through and gets Royal assent but in the meantime whether and notwithstanding and whatever - if he could look beyond the clarification which he has had so far as to the meaning of the Bill and what I have just raised to see whether I am, in fact, wrong or right. Thank you.

The Speaker: Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I am not convinced that the previous speaker has presented his case particularly well, and he has offended a number of hon. members in the House; however, there does appear to me to be some legitimacy to the questions that he raises which are not able to be answered clearly so far this afternoon. Being a realist, my view is that the issue has been taken on board by the mover of the Bill. I would hope that the previous speaker, the mover of the Bill, the mover of the amendment and certainly, on my part, myself will ensure that when the third reading has been completed and it has gone to the Legislative Council, this issue will be fully aired and will be brought to the attention of members of the Legislative Council, by myself at least, in order that this can be clarified. In order to have got to this stage, we have gone through a system where, I am sure, the Attorney-General's Chambers

have looked at it. I do not believe that the mover of the Bill has been misled - I am sure the interpretation he has been given is correct - but I think, in a technical area like this, he has possibly not presented the case as clearly as the previous speaker or myself would have liked. That is regrettable, but the time of the year, I think, reflects there are some things being rushed. I will ensure, through the Legislative Council, that this item is not rushed through to completion automatically by ensuring that they take due note of the concerns, and I will be expecting to get some response from them. Now, that is a mechanism which is unsatisfactory, but the alternative is to vote against it. A vote against it - which, considering the muttering of some, I may still choose to do to register my vote - is one which is not going to change the outcome of this afternoon; therefore I will put down on notice to the mover of the Bill that this may well have a rocky ride elsewhere if, indeed, some of the observations of the previous speaker are found to be, at least in part, accurate.

I do think that it is regrettable that the mechanism by which this Bill has come through to us today and in previous weeks has meant that a number of members are not well prepared, myself included. However, the previous speaker did make the point that we are moving legislation on the Isle of Man. People who will criticise the previous speaker or myself, or mutter all the time when people are talking, are ones who must be convinced in their own mind that they know which way they are voting. From my point of view, I thought that the comments made by the member for Rushen deserved more credence than they were actually given because, on page 3, it does appear to contradict the statements that have been made, at least in part, by the mover of the Bill and the mover of the amendment. I trust that their interpretation from the Attorney-General is accurate, but I have not had conviction today to prove that that is right. I will notify the mover of the Bill that I will also vote against it, and that is mainly because of the attitude of some people this afternoon, sir.

Mr Cannell: Mr Speaker, may I make a point, please? Could you please clarify for this hon. House that it is not an essential or legal requirement that members are obliged to bring any information in considering a Bill?

The Speaker: That is correct, sir.

Mr Cannell: Thank you.

The Speaker: Anybody else?

Mr Rimington: Mr Speaker, on the point of clarification, could you tell me whether it is advisable for members to have the Bill before them?

The Speaker: It is not for me to give an opinion. Standing orders state that members are required to attend. Mr Quine.

Mr Quine: Thank you, Mr Speaker. I think it is unfortunate when we go away from the substantive duties that we have, and although I have no concerns over the submission being made by the hon. member for Rushen, I do feel that perhaps the way he made it got a few backs up, and that has not helped us to come to a cool deliberation in this particular situation. Having said that, I suppose I will be reminded that on occasions I have done the same thing myself and also not done the best for my cause.

But I have tried to follow - and I have certainly read this Bill many times - the nub of the point that the hon. member is making, and I am still not with him, I am afraid, although I know he has done his best to try to explain it to me, because it seems to me to be fairly straightforward. This obligation to maintain secrecy in these matters may be lifted in certain circumstances, and those circumstances are spelt out here in the Bill. They can be circumstances which relate to a criminal investigation; they can be circumstances which relate to a criminal proceeding; and they can relate to the initiation of those proceedings or the running down of those proceedings or the termination of those proceedings. In those three situations, it applies whether it is on the

Island or elsewhere. Of course, (d) which refers to enabling or assisting and enforcing authority to discharge its function, is somewhat separate; that, of course, is an Island-based element. That to me is quite clear; I do not see any problem with that.

I think there is a difficulty that we who are not legal draftsmen have to come to terms with, and that is trying to go back to a definition to put some meat on the bone for those provisions. That is where we come, of course, to the definition of 'crime', which I think is quite clear: either it constitutes one or more criminal offences, whether on the Island or otherwise - so it could be an offence here or it could be an offence somewhere else - or it corresponds to any conduct which, if it took place on the Island, would constitute one or more criminal offences, which is the matter that I was seeking to address by way of my amendment. And the criminal proceedings, of course, flow from the two aspects of that definition. Now, the only point that I could pick up from the contribution from the hon. member for Rushen is this matter of (a), where it says 'constitute one or more criminal offences, whether on the Island or otherwise', in other words whether one could, on the basis of what is an offence in a territory off-Island, make that the basis of your case for the information as well as information which corresponds to one of our offences. My reading of this is that it covers both contingencies. Again, perhaps somebody is going to correct me, but that is how I read this. But I am sure we will get clarification, if not by the mover when he sums up, then certainly, I am sure, it will be looked at closely in another place.

Just to round off on this one, I would certainly not be minded to vote against the third reading of this Bill. I recognise the importance of the principle that is embodied in this Bill, although I have these concerns about the control mechanisms for releasing information to overseas territories. I feel I have done my honest best to put before this House that question quite clearly, and the House has stood in judgement on that and they have told me to go home and get on with my knitting! That is fine; I do not mind. I have put my case and the Keys have stood in judgement, and I hope I put it clearly. But the points having been made, I am sure we can all take some comfort from the fact - and I do not often take comfort from the other place - that it has to go through other stages. These points, which have been made here today, will be carefully looked at. It is a natural relationship between what we say and do here and what is examined in the other place, and I am sure that if there is any further occasion to report back, it will come back in the normal way as a suggested amendment for us to consider. So, with those comforts, such as they are, and recognising the importance of the Bill in the terms of the principles that we are trying to carry forward, and playing our part in this exchange of information, I will not be minded to vote against this Bill. I will be voting for this Bill and taking some comfort that if there are a few loose ends, which is not unusual to any Bill, then I am sure they will be shaken out before we get to the end of the process.

The Speaker: Sir Miles Walker.

Sir Miles Walker: Thank you, Mr Speaker. The hon. member who has just resumed his seat, I think, reflects my position. I am in support of the Bill. The area where we differ is the area that has been sorted out with the amendment; whereas the hon. member for Ayre saw a need for the collector to have the consent of the Attorney-General to impart information to another jurisdiction, I do not see that as a necessity and I would leave that matter with the collector, as the Bill does. I see that the imposition of the amendment, had it been carried, may have, in fact, inhibited some of the relationships that the assessor has well established at the moment.

It was my understanding that it was the double offence principle that was embodied in this Act. Now, my hon. colleague has thrown some doubt onto that, and obviously it is something that we need to clarify in our thoughts, but even if the double offence principle is not to be in this Bill, as my hon. colleague suggests, then I would say that this Bill is worthy of our support. I believe that internationally the principle of the double offence is something that is going to go out of the window very shortly anyway and will just not be acceptable, in the same way as the

fallback of requiring the consent of a non-Island official, i.e. the Attorney-General, has also, in my words, gone out of the window, and so we removed it from our Criminal Justice Bill. I think this issue of double offence is going to disappear as well. It is probably going to disappear for a different reason, and it is probably going to disappear for taxation reasons. We are a country, of course, that does not have any income tax and cannot have any criminal offences against tax, and so if you rely on that double offence issue, then there can be no exchange of information. I am sure that that would be wrong in so many circumstances. So, I think the issue of double offence is on its way out. It was my understanding that it was in this Bill, but even if it is not, I think that this Bill is worth supporting, and I would ask hon. members to vote in favour.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I would just like to say that I have had some concern about this piece of legislation. I am somewhat surprised by the hon. member for Ayre doing this Pontius Pilate bit of saying that somehow the House of Keys has done its job and that if we feel there are problems with this piece of legislation, we are not the revising chamber; they are the revising chamber, and we should be looking at fundamental principles. If the hon. member has got concerns, it is too simplistic to say, 'Oh, well, leave it to the other lot.' That is of great concern to me.

The only other thing that I would like to say is that we must remember that we are putting this into primary law. Once it has royal assent, if it does develop into a chink in our financial affairs in the Island, that chink will not be allowed to be banged out; it will be made and it will be made to get bigger. I think the point that I would like from the Minister for Treasury is the issue of the double offence, because I do tend to agree with the hon. member for Rushen. Whether under the law of the Island or under any other country or territory outside the Island, one or more criminal offences, I do find that rather concerning and I would like to know where the double offence has to be, where it is actually in this primary law that it can be used.

Now, I have missed most of this debate - I admit that - but I do feel that the House does need to be sure, and I think it is too simplistic to say, 'All right, boys, they will sort it out in the other House for us.' If people have got concerns, my personal view would be that if the mover cannot assure us of the issue, then I would rather see it come back at the next sitting, and then we can have that cleared up at the last sitting of this House in order to be sure. I do not think it is right to say that . . . And another member said the Legislative Council will take heed. Well, I do not believe that we should leave things to chance; I believe that we should be here. And I am concerned about this issue. I am concerned about fishing expeditions as far as other areas are concerned, using bogus reasons to use them as Trojan horses in order to find out commercial secrets as far as the Isle of Man is concerned because, at the end of the day - and I know I get very repetitious - if I was a British MP, I would be looking after Britain. I am a Manx MP and I have to look after the Isle of Man, like every other member in this House, and I am sure that all of us are as committed as far as that is concerned. But I think that we must be very careful that we do not allow. . . And I do think that the hon. member for Rushen has got a point, and I would like to know whether there are things that would not be a criminal offence in this country that would be a criminal offence in other countries that would be able to get that information out of the jurisdiction of this Island. I do not want to be a haven for rogues and tax fraudsters, but I do believe that this hon. House has got a responsibility. And I do not agree with the hon. member for Ayre; we must not allow ourselves just to say, 'Oh, well, leave what you cannot. . . Hopefully they will sort it out', because we should sort it out. And if the minister does not feel that he can give suitable replies, I would be very happy to support the suspension of standing orders at the next sitting in order that this issue can be further debated.

The Speaker: Chief Minister.

Mr Gelling: Yes, Mr Speaker. I think the hon. member for Rushen was basically wanting some explanation rather than perhaps saying that he disagreed with it, because he did not quite, I do not think, understand what this meant. As far as I can read the situation, it is quite clear, because the situation that the offence need not be an offence in the Isle of Man but could very well be an offence in the other jurisdiction, the one part that the hon. member for Onchan has missed when he talks about fishing expeditions is the fact that it must be a customs and excise-related crime. So, in other words, the other jurisdiction could not come to the Island on a fishing expedition on some fictitious non-customs and excise crime; It has got to be a customs and excise-related crime. Therefore the situation is that if members are then saying that they do not like that, that is a different matter, but I think the hon. member for Rushen was basically saying, 'Is that what it means?' and if so, he could then consider it. So, basically, I am quite sure the hon. mover, the Treasury minister, will be able to probably expand on that, but that is certainly how I read it. Following on from the hon. member for Rushen, Sir Miles, the amendment which we have defeated - and, as the hon. member has said, it has been tested and it has gone - was basically a safeguard that was in there a few years ago in other parts of legislation that we have since taken out, so, basically, this would leave the Bill as other legislation that has gone through this House, sir. I just hope that might be helpful.

The Speaker: I call upon the mover to respond. Mr Corkill.

Mr Corkill: Mr Speaker, I will do my best on what is a very complicated piece of legislation. I thank hon. members for their scrutiny, and once again I apologise to hon. members for the speed with which we have tried to go forward with this Bill. Perhaps, at the end of a long week, on such an afternoon, it is not the best time to keep ourselves on an even keel, and I am sorry that the tone of the debate went off to one side.

The ethos behind this piece of legislation that Treasury is promoting is to deal with criminal activity - financial fraud - which, if the Isle of Man does not keep it out, is going to drag us down in the eyes of the international community - quite rightly, because we are a global citizen. This is all a matter of confidence in our Customs and Excise. It is a matter of, 'Will our Collector of Customs and Excise give information out when he should not? Will he be duped into giving information out by spurious investigations?' There is always that possibility, but I would say that it is a rare possibility. Can I say that our experts in Customs and Excise are not stupid; they are aware of how people operate and they are aware of the sorts of questions and of how trickery can be brought about. And so there is the need to have confidence in our officers. Now, I have that in our Customs and Excise, but I do appreciate that I am perhaps closer to that division of government on a day-to-day basis than other hon. members are.

Clause 1 inserts new sections into the Act, and these sections are concerned with disclosure of information (a) by the Customs and Excise Division to other enforcing authorities in the Isle of Man, and (b) by other enforcing authorities in the Island to the Customs and Excise Division. The new Section 174(a) allows the Customs and Excise Division of the Treasury to disclose information (a) for the purpose of a criminal investigation being carried out in the Island or elsewhere, (b) for the purpose of criminal proceedings in the Island or elsewhere, or (c) to enable or assist - and I emphasise 'assist' - specified authorities in performing functions laid to them. Sub-section 1 provides that the section applies to information and documents held by the Treasury, Collector of Customs and Excise or any officer of that division. It goes on to talk about assigned matters, and they are all detailed and this Bill tidies all that assigned matters situation up. Sub-section 2 provides that obligation to secrecy imposed by a statute or otherwise prevents the disclosure of the information or documents referred to in sub-section 1 for the following purposes: for the purpose of a criminal investigation being carried out in the Island or elsewhere, and I have already said them. Can I go to sub-section 4? This provides that information or documents disclosed to another agency or authority by virtue of sub-section 2 shall not be passed on by the recipient agency or authority without the consent of the collector,

and for one of the purposes mentioned in sub-section 2. Sub-section 5 provides that the consent of the collector for information passed on by Customs and Excise under the terms of sub-section 4 may be either specific or in general. In sub-section 6, this provides that sub-section 174(a) is not to be taken to permit the disclosure of information to or by Customs and Excise if such disclosure is prohibited by the Data Protection Act of 1984.

So, there are safeguards in this Bill in terms of people's rights. What there is no safeguard for in this Bill is criminality because, as my hon. colleague, Sir Miles, explained, in the global world that we are living in there are jurisdictions where, for instance with income tax offences, if there is no income tax, it cannot be an offence in that jurisdiction if it is an income tax offence in another jurisdiction. We are not in that situation because we do have income tax, but it seems to me quite right that the Island co-operates. All the time that I have been the Treasury minister, it has been about how we can best co-operate in the international community to help reduce the global scourge of massive money laundering on a mega-scale. We get the backwash of that from time to time, and it damages our reputation. This will help our agencies to co-ordinate their activity in what is a very big global exercise. Can I say that our officers are off the Island on a number of occasions throughout the year, co-operating with authorities all over the world - whether that is in the USA, South America, Europe or the UK - in trying to track down the money-laundering barons, and there is a need to exchange information simply, quickly and effectively. The efforts of all these agencies are targeted at the top end, at the big criminal end; they are not targeted at reputable individuals going about their normal lives. And so there is protection in this Bill, and I hope that I can convince hon. members to support it.

If I have not satisfied those who are concerned about the fishing expeditions, I am sorry. What I will be able to do before this Bill proceeds in the Legislative Council, if members give it the support today, is to perhaps arrange a briefing or a letter of explanation. My colleague, Mr Radcliffe, the Member of the Legislative Council, is due to take this Bill in the Legislative Council, but before that happens, or as it happens, perhaps I can, with the help of the officers of Treasury and the Customs and Excise, explain more eloquently or better than I have been able to do today what we are about with this legislation. And so I will be in touch with members about arranging something of that order, either a presentation or an explanation by letter with proper legal advice, to make sure that members are satisfied, as the Bill progresses, that this fishing expedition thing is nailed down. I beg to move the third reading, sir.

The Speaker: Hon. members, the motion is that the Customs and Excise (Amendment) Bill be read a third time. All those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Quine, Sir Miles Walker, Messrs Henderson, Duggan, Shimmin, Downie, Mrs Hannan, Messrs Bell, Corkill, Cannell, Gelling and the Speaker - 13

Against: Messrs Rimington and Karran - 2

The Speaker: Hon. members, the motion carries, with 13 votes in favour and 2 votes against.

That, hon. members, concludes our business for today. The House now stands adjourned until Tuesday next, 26th June, at 10.00 a.m. in this Chamber. Thank you, hon. members.

The House adjourned at 3.53 p.m.